

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2552 of 1996

with

CRIMINAL MISC.APPLICATION No 2959 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALAJI BHIKHAJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2552 of 1996
MR YS LAKHANI for Petitioner
MR. D.C. DAVE, ADDL. PUBLIC PROSECUTOR for
Respondent No. 1
MR VIPUL S MODI for Respondent No. 2, 3, 4
2. Criminal Misc.ApplicationNo 2959 of 1996
MR. D.C. DAVE, ADDL. PUBLIC PROSECUTOR for Petitioner
MR VIPUL S MODI for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/11/97

COMMON ORAL JUDGEMENT

Rule in Criminal Misc. Application No. 2959 of 1996. Mr. Vipul Modi, learned counsel, waives service of rule.

Criminal Misc. Application No. 2552 of 1996 has been filed by the complainant Kalaji Bhikaji and Criminal Misc. Application No. 2959 of 1996 has been filed by the State of Gujarat for cancellation of bail granted by the order dated 30.4.1996 in Misc. Criminal Application No. 275 of 1996 by Special Judge, Banaskantha at Palanpur. I have gone through the order passed by the learned Judge. The accused-respondents are facing trial for the charges under Section 302, 323, 504, 506(2) of IPC read with Sections 3(1) and 4(5)(10) of Prevention of Atrocities Act and Scheduled Castes and Scheduled Tribes Act, 1989 and Section 135 of the Bombay Police Act. It appears that while the complainant Kalaji Bhikaji was proceeding into his land near petrol pump of Zanzarwa village with labourers on tractor and trolly driven by the driver Chhelabhai and when he reached to the field and while he was unloading necessary loaded material to construct kaccha chhapra in the field, accused Devrambhai Vashrambhai Patel and his brother Ravjibhai Vashrambhai Patel and their watchman arrived at the site and questioned as to why they have entered in the field. The complainant replied that he is in his field and has come to construct a chhapra. This enraged the accused persons and they started abusing them. It is also alleged that the accused Devrambhai Vashrambhai Patel gave an axe blow on the reverse on the back of the complainant and second reverse blow on the left hand. Accused No. 2 Ravjibhai Vashrambhai Patel gave a stick blow on the back side and legs of the complainant. Meanwhile, the deceased Becharbhai Patel who had to intervene in this scuffle to separate them, the watchman of the accused Nos. 1 and 2 having given stick blows on the legs of the deceased, he fell down. Thereafter, accused No. 1 Deverambhai Vashrambhai Patel dealt with two axe blows one each on the mouth and head and accused No. 2 Ravjibhai Vashrambhai Patel gave a stick blow on the different parts of the body of the injured Becharbhai Patel and thereafter they fled away towards their house. It appears from the postmortem report that the deceased has totally sustained 24 injuries. The learned Sessions Judge after examining the matter in great detail, arrived at the conclusion that the offence perhaps falls under Section 304 Part-II of I.P.C. The offence is punishable with imprisonment for 10 years. In view of this, the

learned Judge granted bail on certain conditions.

Having heard the learned counsel for the parties and having read the order of the learned Sessions Judge, in my view, the learned Judge ought not to have entered into greater detail of the case at this stage considering the bail application under Section 439. It was not proper for him to return a finding that it was a case of Section 304 Part-II as well as Section 325. On going through the relevant papers otherwise conclusion can also be arrived at by this court. However, as the trial is pending, it is not desirable to make any observation on the merit of this case as it may prejudice the trial. Suffice it to say that the accused respondents are on bail since May 1996 and there is no allegation that they have abused the liberty. In view of this, I am not inclined to pass an order of cancellation of bail. Suffice it to say that I am not impressed the way in which the learned Sessions Judge has disposed of the application. In view of the aforesaid, both the aforesaid Criminal Miscellaneous Applications are rejected. Rule is discharged.

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